

CONFIDENTIAL
WEEKLY HOT ISSUES REPORT for RA/DRA Region 8
Week ending September 1, 2017

OFFICE OF ECOSYSTEMS PROTECTION AND REMEDIATION

Chemical Sales Superfund Site, Commerce City, CO August 31, 2017

Ex. 5 Deliberative Process (DP)

- Contact: Richard Sisk 312x6638 and Stan Christensen 312x 6694

OFFICE OF ENFORCEMENT, COMPLIANCE & ENVIRONMENTAL JUSTICE

HOT ISSUES AND IMPORTANT DEADLINES:

Ex. 5 DP / Ex. 7(A)

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Petroleum Wholesale, L.P. settles with Wetlands & OPA Enforcement Unit for SPCC Plan violations in Brighton and Watkins, Colorado.

Key Message: Petroleum Wholesale, L.P. has agreed to two separate combined complaint and consent agreements (CCCA's) to settle SPCC Plan violations at two truck stop gas stations in Colorado.

- On February 24, 2016, Region 8 conducted an SPCC inspection at the Watkins truck stop based on a complaint from the Colorado Division of Public Safety and Oil. The violations documented at the

Watkins truck stop included: an inadequate SPCC Plan, inadequate secondary containment for tanks, and no secondary containment for a loading area.

- Region 8 worked with Petroleum Wholesale to bring the Watkins truck stop into compliance: a new secondary containment was constructed and other violations in the SPCC Plan were corrected.
- Petroleum Wholesale, L.P. purchased the Brighton truck stop from Silco Oil (who also paid a penalty for SPCC violations in 2015), knowing there were unresolved SPCC violations that needed to be addressed.
- July 1, 2015, the Region met with Petroleum Wholesale representatives and discussed the remaining SPCC violations at the truck stop.
- Violations at the Brighton truck stop were resolved when the operation was permanently closed and the tanks cleaned out on February 9, 2017.
- The CCCAs require a penalty payment of \$11,000 for the Brighton truck stop and \$39,000 for Watkins truck stop.
- Contact: Donna K. Inman, 312-6201; Management Contact: Ken Champagne, 312-6608

Ex. 5 DP / Ex. 7(A)

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Air Program issued Soft Demand Letter to Exxon Mobil Corporation– Billings Refinery (Exxon) for Consent Decree (CD)-related Stipulated Penalties for Particulate Matter (PM) Exceedances from the Fluidized Catalytic Cracking Unit (FCCU)

Key Message: Air Enforcement has issued a soft demand letter on August 29, 2017, to Exxon for CD-related Stipulated Penalties. Enforcement was requested to be initiated by the EPA from the Montana Department of Environmental Quality (MTDEQ).

- The penalty amount is \$28,000.

Ex. 5 DP / Ex. 7(A)

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- Exxon does not believe that stipulated penalties apply as the CD has a condition (Paragraph 36) that a malfunction of the third-stage cyclones will not be used to determine compliance with the PM emission limit.
- MTDEQ and the EPA do not believe that there was a valid malfunction and believe that the PM violations were caused entirely or in part by poor maintenance, poor design, and/or other preventable upset conditions. Therefore, the stipulated penalties apply.
- Contacts: Bob Gallagher, 406-457-5020; Marc Weiner, 303-312-6913.

The SDWA Enforcement Unit issued an Administrative Order to Fireside Resort Inc., owner and operator of Jackson Hole Campground public water system, located in Teton County, WY

Key Message: The Administrative Order (Order) issued to Fireside Resort Inc. for a drinking water violation at the Jackson Hole Campground public water system (System).

- The System is classified as a transient non-community water system serving approximately 170 individuals.
- The violation includes failure to monitor for nitrate 2016.
- The Order requires the System to achieve and maintain compliance as required by the regulations.
- The EPA is taking this action because the state does not have delegation.
- Technical Contact: Metea Wright 312-6023; Management Contact: Tiffany Cantor 312-6521.

OFFICE OF PARTNERSHIPS AND REGULATORY ASSISTANCE

HOT ISSUES AND IMPORTANT DEADLINES:

This Week

The Three Affiliated Tribes (MHA Nation) Comply With All RCRA Subtitle I Requirements at The Nishu Store.

Key Message: On August 28, 2017, Region 8 signed and sent the MHA Nation Notices of Intent to Prohibit Delivery at the Nishu Store in White Shield, North Dakota.

- The Nishu Store had not had financial responsibility for their underground storage tanks (UST) since 2013.
- On August 29, 2017, the MHA provided proof of certification from the North Dakota Petroleum Tank Release Compensation Fund that the Nishu Store has financial responsibility. Region 8 will now send a letter to the MHA stating that Nishu Store is now in compliance with RCRA Subtitle I and that the delivery prohibition will not take place.
- The Nishu Store's compliance with RCRA Subtitle I UST regulations marks the culmination of more than a decade of effort by the R8 UST and Legal Enforcement Programs.
- Contacts: Francisca Chambus, UST Program, 312-6782; Amy Swanson, Legal Enforcement, 312-6906; Janice Pearson, UST, Solid Waste and PCB Unit Chief, 312-6354

Next 30 Days

Petitions Challenging EPA's 2015 Hot-Spot Modeling Guidance and the I-70 East Project in North Denver

Ex. 5 Deliberative Process (DP)

- In March 2016, Sierra Club filed a Petition with the D.C. Circuit challenging the EPA on the issuance and adequacy of its 2015 Particulate Matter (PM) Hot-Spot project-level modeling Guidance document. Oral argument for that litigation is scheduled for September 19, 2017.
- On July 10, 2017, the Sierra Club, Elyria and Swansea Neighborhood Association, Chafee Park Neighborhood Association, and the Colorado Latino Forum filed a Petition in the U.S. District Court for the District of Colorado against the Federal Highway Administration (FHWA) challenging their Record of Decision for the I-70 East Project that authorizes the expansion of I-70 in north Denver. The deadline for FHWA to answer the complaint is September 18, 2017.
- Among their many claims, Petitioners state that based on FHWA's use of the EPA's 2015 PM Hot-Spot guidance for the I-70 East project, the FHWA's air quality modeling analysis is flawed and the project would actually cause or contribute to exceedances of the PM₁₀ 24-hour National Ambient Air Quality Standard. Petitioners also again challenge the legality of the EPA's 2015 PM Hot-Spot Guidance overall.

Ex. 5 Deliberative Process (DP)

- Contacts: Monica Morales 312-6936; Scott Jackson 312-6107; Brian Joffe (8ORC) 312-6499

OFFICE OF TECHNICAL AND MANAGEMENT SERVICES

No report

OFFICE OF WATER PROTECTION

HOT ISSUES AND IMPORTANT DEADLINES:

Consultation with the Mandan, Hidatsa and Arikara Nation on proposed EPA actions.

Key Message: On September 1 Region 8 will consult with the MHA Nation to gather input on three issues affecting the Fort Berthold Indian Reservation: Underground Injection Control permitting, addressing spills of produced water, and regulation of UIC, drinking and waste water facilities.

- The MHA Nation asked for consultation on two UIC matters: the EPA's implementation of the UIC program on the reservation in light of a tribal resolution banning UIC activities without tribal government approval, and concerns over injected fluids migrating beneath trust land.
- We will discuss concerns and options for notification of and addressing surface spills of produced water.
- Currently some discharging facilities on the reservation have state-issued NPDES permits which the state has determined are unenforceable, and no EPA-issued permits; some drinking water facilities are regulated by EPA but others by the state, and at least one UIC facility is operating without an EPA permit.
- Region 8 will consult on its proposal to directly regulate facilities on the reservation subject to the Clean Water and Safe Drinking Water Acts since the state is not authorized to regulate in Indian country.
- Contact: Bert Garcia, 312-6670

Consultation with the Ponca Tribe of Nebraska on the Proposed Dewey Burdock in Situ Uranium Project.

Key Message: On August 23 Region 8 consulted with the Ponca Tribe of Nebraska on the draft UIC permits and associated aquifer exemption for the Dewey Burdock ISR project located in Edgemont, SD.

- The Ponca Tribe of Nebraska requested formal consultation on the permit actions to gain additional information on the project and provide the Tribe's input.
- The Tribe expressed serious concerns with the project, including:
 - Exemption of a portion of an underground source of drinking water;
 - Ensuring that contaminants do not leave that exempted injection zone;
 - Potential for earthquakes; and
 - Restoration of the site.
- In addition, the Tribe will review the previous work done by the Nuclear Regulatory Commission under the National Historic Preservation Act obligations, specifically around site surveys of the proposed project area and plans to address handling of any artifacts found at the site.
- The Tribe will provide additional feedback to Region 8 and may request another in person formal consultation to finalize its response.
- Region 8 will follow up with both the Tribal Advisor and the Water Division Director in Region 7 on the outcome of the consultation.
- Contact: Darcy O'Connor, 312-6392

Wastewater Unit to Comment on MTDEQ's Lagoon General Permit

Key Message: The Wastewater Unit is providing comments to MTDEQ identifying two major concerns with its public noticed NPDES general permit for continuously discharging lagoons.

- The permit documentation includes lists of facilities which have a reasonable potential to cause or contribute to a violation of water quality standards for total nitrogen, total phosphorous, ammonia as nitrogen, and nitrate plus nitrite as nitrogen. However, the permit does not include effluent limits for these pollutants as required by NPDES rules.
- Instead, the permit gives the facilities a four-year compliance schedule to apply for individual permits. The compliance schedule lacks specific milestones, and does not lead to compliance with an effluent limit as required by NPDES rules.
- Wastewater has called the MPDES program about these issues, and they are aware we are submitting written comments.
- MTDEQ public noticed the draft permit on July 27. Comments are due by COB August 31.
- Contact: Colleen Rathbone, 312-6133

Second Phase of Documents in Response to Mamm Creek FOIA Released August 29

Key Message: On August 29 Region 8 released additional documents regarding our evaluation of groundwater quality and gas production well construction in the Mamm Creek field in Garfield County, CO. We will notify the Colorado Oil and Gas Conservation Commission regarding the release so they can be prepared for any questions that may be prompted by the release.

- EPA received a Freedom of Information Act (FOIA) request in January 2017 seeking all documents related to our Mamm Creek technical evaluation.
- An initial batch of 161 responsive documents was released on July 14.
- The August 29 release includes 194 additional documents.
- EPA anticipates releasing a final round of documents this fall to close out the request.
- Contact: Tricia Pfeiffer, 312-6271; Ayn Schmit, 312-6220